

Apr 26, 2019

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

BARBARA H.,

Plaintiff,

v.

COMMISSIONER OF SOCIAL  
SECURITY,

Defendant.

NO: 4:18-CV-5118-RMP

ORDER GRANTING PLAINTIFF'S  
MOTION FOR SUMMARY  
JUDGMENT AND DENYING  
DEFENDANT'S MOTION FOR  
SUMMARY JUDGMENT

BEFORE THE COURT are cross-motions for summary judgment from Plaintiff Barbara H.,<sup>1</sup> ECF No. 11, and the Commissioner of Social Security (the "Commissioner"), ECF No. 12. Plaintiff seeks judicial review, pursuant to 42 U.S.C. § 405(g), of the Commissioner's denial of her claim for supplemental security income under Title XVI of the Social Security Act (the "Act"). The Court has considered the parties' briefings and the administrative record, and is fully

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<sup>1</sup> In the interest of protecting Plaintiff's privacy, the Court will use Plaintiff's first name and last initial, and, subsequently, Plaintiff's first name only, throughout this decision.

1 informed. For the reasons discussed below, the Court **GRANTS** Plaintiff's Motion  
2 for Summary Judgment, ECF No. 11, and **DENIES** Defendant's Motion for  
3 Summary Judgment, ECF No. 12.

## 4 **BACKGROUND**

### 5 **A. Plaintiff's Claim for Benefits and Procedural History**

6 Plaintiff protectively filed an application for supplemental security income on  
7 May 17, 2013. Administrative Record ("AR") 245–54.<sup>2</sup> Plaintiff alleged that her  
8 onset date was December 5, 2011, but later amended the alleged onset date to March  
9 15, 2013. AR 18, 57–59. Plaintiff was 39 years old at the time of her alleged onset  
10 date and 41 years old on her amended alleged onset date. She has an Associate of  
11 Science degree in Graphic Technology. AR 59. The Commissioner initially denied  
12 Plaintiff's application for supplemental security income and denied Plaintiff's  
13 application upon reconsideration. AR 130–33, 138–40. Plaintiff timely requested a  
14 hearing. AR 141–43.

### 15 **B. December 8, 2015 Hearing**

16 A video hearing took place before Administrative Law Judge ("ALJ")  
17 Elizabeth Watson on December 8, 2015. AR 44–53. The ALJ informed the Plaintiff  
18 of the right to representation, and Plaintiff requested a continuance to obtain  
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21 <sup>2</sup> The AR is filed at ECF No. 9.

1 representation. The ALJ granted Plaintiff's request and continued the hearing. AR  
2 49–52.

### 3 **C. October 7, 2016 Hearing**

4 A second video hearing took place before Judge Watson on October 7, 2016,  
5 with Plaintiff represented by attorney Chad Hatfield. AR 54–87. Plaintiff  
6 responded to questions from her attorney and Judge Watson. AR 59–76. A  
7 vocational expert, Mark McGowan, also appeared at the hearing. AR 77–82.

### 8 **D. March 16, 2017 Hearing**

9 A supplemental video hearing took place before Judge Watson on March 16,  
10 2017, with Plaintiff again represented by attorney Chad Hatfield. AR 88–103.  
11 Plaintiff responded to questions from her attorney and Judge Watson. AR 93–99. A  
12 vocational expert, Frank Lucas, also appeared at the hearing. AR 99–102.

### 13 **E. ALJ's Decision**

14 On March 28, 2017, the ALJ issued an unfavorable decision for Plaintiff. AR  
15 15–33. Utilizing the five-step evaluation process, Judge Watson found:

16 **Step one:** Plaintiff had not engaged in substantial gainful activity since her  
17 amended alleged onset date of March 15, 2013. AR 20.

18 **Step two:** Plaintiff has the following severe impairments: cervical  
19 degenerative disc disease Bartolotti's syndrome and lumbar degenerative disc  
20 disease, status post fusion; migraines; chronic depression; dysthymic disorder;  
21

1       panic disorder without agoraphobia; right carpal tunnel syndrome, status post  
2       release; and obesity. AR 20.

3       **Step three:** Plaintiff does not have an impairment or combination of  
4       impairments that meets or medically equals one of the listed impairments in  
5       20 C.F.R. Part 404, Subpart P, Appendix 1. AR 21.

6       **Residual Functional Capacity (“RFC”):** The ALJ found that Plaintiff had  
7       the RFC to

8               perform a reduced range of light work. She can lift and/or carry  
9               20 pounds occasionally and 10 pounds frequently. She can stand  
10              and/or walk each for about two hours in an eight-hour workday  
11              with normal breaks, and she can sit for about six hours in an  
12              eight-hour workday with normal breaks. She requires the use of  
13              a cane to ambulate, and she must avoid uneven terrain. The  
14              claimant is limited to no more than frequent bilateral foot control  
15              operation. The claimant is limited to no more than occasional  
16              climbing of ramps or stairs and no climbing of ladders, ropes, or  
17              scaffolds. She is limited to no balancing and no more than  
18              occasional stooping, kneeling, crouching, and crawling. The  
19              claimant must avoid all unprotected heights and all excessive  
20              vibration. The claimant can understand and carry out simple  
21              instructions. She is limited to no more than occasional,  
                superficial contact with coworkers and supervisors.

16       AR 23–24.

17       **Step four:** Plaintiff is incapable of performing past relevant work. AR 32  
18       (citing 20 C.F.R. § 416.965). Plaintiff’s past relevant work includes a day  
19       care worker. *Id.*

20       **Step five:** Considering Plaintiff’s age, education, work experience, and RFC,  
21       Plaintiff can work jobs that exist in significant numbers in the national

1 economy. AR 32. Specifically, the ALJ found that Plaintiff can work as a  
2 marketing clerk, garment sorter, and routing clerk. AR 33.

3 The ALJ's decision became the final decision of the Commissioner when the  
4 Appeals Council denied Plaintiff's request for review on May 13, 2018. AR 1–4.  
5 Plaintiff now seeks judicial review.

## 6 **APPLICABLE LEGAL STANDARDS**

### 7 **A. Standard of Review**

8 Congress has provided a limited scope of judicial review of a Commissioner's  
9 decision. 42 U.S.C. § 405(g). A court may set aside the Commissioner's denial of  
10 benefits only if the ALJ's determination was based on legal error or not supported by  
11 substantial evidence. *See Jones v. Heckler*, 760 F.2d 993, 995 (9th Cir. 1985) (citing  
12 42 U.S.C. § 405(g)). "The [Commissioner's] determination that a claimant is not  
13 disabled will be upheld if the findings of fact are supported by substantial evidence."  
14 *Delgado v. Heckler*, 722 F.2d 570, 572 (9th Cir. 1983) (citing 42 U.S.C. § 405(g)).  
15 Substantial evidence is more than a mere scintilla, but less than a preponderance.  
16 *Sorenson v. Weinberger*, 514 F.2d 1112, 1119 n.10 (9th Cir. 1975); *McCallister v.*  
17 *Sullivan*, 888 F.2d 599, 601–02 (9th Cir. 1989). Substantial evidence "means such  
18 evidence as a reasonable mind might accept as adequate to support a conclusion."  
19 *Richardson v. Perales*, 402 U.S. 389, 401 (1971) (citations omitted). "[S]uch  
20 inferences and conclusions as the [Commissioner] may reasonably draw from the  
21 evidence" will also be upheld. *Mark v. Celebrezze*, 348 F.2d 289, 293 (9th Cir.

1 1965). On review, the district court considers the record as a whole, not just the  
2 evidence supporting the decisions of the Commissioner. *Weetman v. Sullivan*, 877  
3 F.2d 20, 22 (9th Cir. 1989) (quoting *Kornock v. Harris*, 648 F.2d 525, 526 (9th Cir.  
4 1980)).

5 It is the role of the trier of fact, not the reviewing court, to resolve conflicts in  
6 evidence. *Richardson*, 402 U.S. at 400. If evidence supports more than one rational  
7 interpretation, the court may not substitute its judgment for that of the  
8 Commissioner. *Tackett v. Apfel*, 180 F.3d 1094, 1097 (9th Cir. 1999); *Allen v.*  
9 *Heckler*, 749 F.2d 577, 579 (9th Cir. 1984). Nevertheless, a decision supported by  
10 substantial evidence will still be set aside if the proper legal standards were not  
11 applied in weighing the evidence and making a decision. *Browner v. Sec’y of Health*  
12 *& Human Servs.*, 839 F.2d 432, 433 (9th Cir. 1988). Thus, if there is substantial  
13 evidence to support the administrative findings, or if there is conflicting evidence  
14 that will support a finding of either disability or nondisability, the finding of the  
15 Commissioner is conclusive. *Sprague v. Bowen*, 812 F.2d 1226, 1229–30 (9th Cir.  
16 1987).

## 17 **B. Definition of Disability**

18 The Social Security Act defines “disability” as the “inability to engage in any  
19 substantial gainful activity by reason of any medically determinable physical or  
20 mental impairment which can be expected to result in death or which has lasted or  
21 can be expected to last for a continuous period of not less than 12 months.” 42

1 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A). The Act also provides that a claimant shall  
2 be determined to be under a disability only if her impairments are of such severity  
3 that the claimant is not only unable to do her previous work, but cannot, considering  
4 the claimant's age, education, and work experiences, engage in any other substantial  
5 gainful work which exists in the national economy. 42 U.S.C. §§ 423(d)(2)(A),  
6 1382c(a)(3)(B). Thus, the definition of disability consists of both medical and  
7 vocational components. *Edlund v. Massanari*, 253 F.3d 1152, 1156 (9th Cir. 2001).

### 8 **C. Sequential Evaluation Process**

9 The Commissioner has established a five-step sequential evaluation process  
10 for determining whether a claimant is disabled. 20 C.F.R. §§ 404.1520, 416.920. At  
11 step one, the decision maker determines if the claimant is engaged in substantial  
12 gainful activities. If the claimant is engaged in substantial gainful activities, benefits  
13 are denied. 20 C.F.R. §§ 404.1520(a)(4)(i), 416.920(a)(4)(i).

14 If the claimant is not engaged in substantial gainful activities, the decision  
15 maker proceeds to step two and determines whether the claimant has a medically  
16 severe impairment or combination of impairments. 20 C.F.R. §§ 404.1520(a)(4)(ii),  
17 416.920(a)(4)(ii). If the claimant does not have a severe impairment or combination  
18 of impairments, the disability claim is denied.

19 If the impairment is severe, the evaluation proceeds to the third step, in which  
20 the decision maker compares the claimant's impairment with a number of listed  
21 impairments acknowledged by the Commissioner to be so severe as to preclude any

1 gainful activity. 20 C.F.R. §§ 404.1520(a)(4)(iii), 416.920(a)(4)(iii); *see also* 20  
2 C.F.R. § 404, Subpt. P, App. 1. If the impairment meets or equals one of the listed  
3 impairments, the claimant is conclusively presumed to be disabled.

4 If the impairment is not one conclusively presumed to be disabling, the  
5 evaluation proceeds to the fourth step, in which the decision maker determines  
6 whether the impairment prevents the claimant from performing work that she has  
7 performed in the past. If the plaintiff is able to perform her previous work, the  
8 claimant is not disabled. 20 C.F.R. §§ 404.1520(a)(4)(iv), 416.920(a)(4)(iv). At this  
9 step, the claimant's RFC assessment is considered.

10 If the claimant cannot perform this work, the fifth and final step in the process  
11 is to determine whether the claimant is able to perform other work in the national  
12 economy considering her RFC, age, education, and past work experience. 20 C.F.R.  
13 §§ 404.1520(a)(4)(v), 416.920(a)(4)(v); *Bowen v. Yuckert*, 482 U.S. 137 (1987).

14 The initial burden of proof rests upon the claimant to establish a prima facie  
15 case of entitlement to disability benefits. *Rhinehart v. Finch*, 438 F.2d 920, 921 (9th  
16 Cir. 1971); *Meanel v. Apfel*, 172 F.3d 1111, 1113 (9th Cir. 1999). The initial burden  
17 is met once the claimant establishes that a physical or mental impairment prevents  
18 her from engaging in her previous occupation. *Meanel*, 172 F.3d at 1113. The  
19 burden then shifts, at step five, to the Commissioner to show that (1) the claimant  
20 can perform other substantial gainful activity, and (2) a "significant number of jobs  
21



1 exist in the national economy” which the claimant can perform. *Kail v. Heckler*, 722  
2 F.2d 1496, 1498 (9th Cir. 1984).

### 3 ISSUES ON APPEAL

- 4 **I. Did the ALJ err by affording less weight to the opinions of**  
5 **Barbara’s treating physicians?**
- 6 **II. Did the ALJ err by finding that Barbara’s impairments do not**  
7 **meet or equal a Listing at step three?**
- 8 **III. Did the ALJ err by affording little weight to the lay witness**  
9 **testimony?**
- 10 **IV. Did the ALJ err in her assessment of Barbara’s subjective**  
11 **complaints?**
- 12 **V. Did the ALJ meet her burden at step five?**

### 13 DISCUSSION

#### 14 **A. Medical Opinion Evidence**

15 Plaintiff contends that the ALJ improperly rejected the opinions of her treating  
16 medical providers, Albert Randolph, M.D., and Jason Dreyer, D.O. ECF No. 11 at  
17 10–11. The Commissioner argues that the ALJ appropriately weighed and evaluated  
18 the opinions of Dr. Randolph and Dr. Dreyer. ECF No. 12 at 3.

19 The ALJ is responsible for determining credibility, resolving conflicts in  
20 medical testimony, and resolving ambiguities in the record. *Magallanes v. Bowen*,  
21 881 F.2d 747, 750 (9th Cir. 1989). The ALJ’s findings “must be supported by

1 specific, cogent reasons.” *Reddick v. Chater*, 157 F.3d 715, 722 (9th Cir. 1998).

2 The ALJ may “draw inferences logically flowing from the evidence.” *Sample v.*

3 *Schweiker*, 694 F.2d 639, 642 (9th Cir. 1982).

4 Social Security regulations provide that for claims filed before March 27,

5 2017, more weight is given to a treating physician’s opinion than to the opinion of a

6 physician who does not treat the claimant.<sup>3</sup> *See Lester v. Chater*, 81 F.3d 821, 830

7 (9th Cir. 1995). The opinion of a treating doctor is given “controlling weight” if it

8 “is well-supported by medically acceptable clinical and laboratory diagnostic

9 techniques and is not inconsistent with the other substantial evidence in [the

10 claimant’s] case record.” 20 C.F.R. § 416.927(c)(2) (rescinded effective March 27,

11 2017). “When a treating doctor’s opinion is not controlling, it is weighted according

12 to factors such as the length of the treatment relationship and the frequency of

13 examination, the nature and extent of the treatment relationship, supportability, and

14 consistency with the record.” *Revels v. Berryhill*, 874 F.3d 648, 654 (9th Cir. 2017);

15 *see also* 20 C.F.R. § 416.927 (c)(2)–(6).

16 If the ALJ finds that the opinion of a treating physician is not contradicted, the

17 physician’s opinion can only be rejected with clear and convincing reasons

18 supported by substantial evidence. *Bayliss v. Barnhart*, 427 F.3d 1211, 1216 (9th

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19  
20 <sup>3</sup> For claims filed on or after March 27, 2017, the Commissioner no longer defers  
21 or gives any evidentiary weight to any medical opinions. 82 Fed. Reg.  
5852–53.

1 Cir. 2005). If a physician’s opinion is contradicted, the ALJ can reject that opinion  
2 with specific and legitimate reasons that are based on substantial evidence in the  
3 record. *Andrews v. Shalala*, 53 F.3d 1035, 1041 (9th Cir. 1995). “An ALJ can  
4 satisfy the ‘substantial evidence’ requirement by ‘setting out a detailed and thorough  
5 summary of the facts and conflicting clinical evidence, stating [her] interpretation  
6 thereof, and making findings.’” *Garrison v. Colvin*, 759 F.3d 995, 1012 (9th Cir.  
7 2014) (quoting *Reddick*, 157 F.3d at 725).

8 An ALJ may reject medical opinions that are internally inconsistent. *Van*  
9 *Nguyen v. Chater*, 100 F.3d 1462, 1464 (9th Cir. 1996); *see also Bayliss*, 427 F.3d at  
10 1216. The ALJ need not accept the opinion of a treating physician that is  
11 conclusory, brief, and unsupported by the record as a whole or by objective medical  
12 findings. *Batson v. Comm’r of the Soc. Sec. Admin.*, 359 F.3d 1190, 1195 (9th Cir.  
13 2004). However, “[w]here an ALJ does not explicitly reject a medical opinion or set  
14 forth specific, legitimate reasons for crediting one medical opinion over another,  
15 [she] errs.” *Garrison*, 759 F.3d at 1012. Thus, “an ALJ errs when [she] rejects a  
16 medical opinion or assigns it little weight while doing nothing more than ignoring it,  
17 asserting without explanation that another medical opinion is more persuasive, or  
18 criticizing it with boilerplate language that fails to offer a substantive basis for [her]  
19 conclusion.” *Id.* at 1012–13. Where an ALJ “fails to provide adequate reasons for  
20 rejecting the opinion of a treating or examining physician,” that opinion is credited  
21 “as a matter of law.” *Lester*, 81 F.3d at 834.

1           ***1. Dr. Albert Randolph's 2013 Opinions***

2           Plaintiff first argues that the ALJ inappropriately rejected Dr. Albert  
3           Randolph's March 2013 and September 2013 opinions. ECF No. 11 at 11. Dr.  
4           Randolph is one of Plaintiff's treating physicians. The ALJ afforded Dr. Randolph's  
5           2013 opinions little weight. AR 28.

6           Dr. Randolph examined Plaintiff and completed a Department of Social and  
7           Health Services ("DSHS") Physical Functional Evaluation form in March of 2013.  
8           AR 353–59. Dr. Randolph diagnosed Plaintiff with headaches, TMJ syndrome,  
9           posttraumatic myofascial syndrome, depression, and anxiety. AR 354, 358. Dr.  
10          Randolph assessed three moderate limitations and one moderate-to-marked  
11          limitation in Plaintiff's ability to complete basic work activities. AR 354. Dr.  
12          Randolph further assessed that Plaintiff can perform sedentary work in a regular  
13          predictable manner despite her impairments. AR 355.

14          Dr. Randolph examined Plaintiff and completed a second DSHS Physical  
15          Functional Evaluation form in September 2013. AR 508–10, 553–55. Dr. Randolph  
16          diagnosed Plaintiff with lumbosacral back discomfort with findings of Bertolotti  
17          syndrome and arthralgia in her hands. AR 509, 554. Dr. Randolph assessed two  
18          marked limitations in Plaintiff's ability to complete basic work activities. AR 554.  
19          Dr. Randolph further found that Plaintiff is "at least restricted to sedentary work or  
20          severely limited by [her diagnoses] with marked interference of ability to perform  
21          work tasks." AR 510, 555.

1       The ALJ gave little weight to Dr. Randolph’s 2013 opinions because “his  
2 limitation to sedentary work is internally inconsistent with his assertion that the  
3 claimant had marked limitation in performing any work tasks.” AR 28. The ALJ  
4 further explained that “such limitations are inconsistent with the record as a whole,  
5 including the objective findings of the in-person examination, the claimant’s  
6 longitudinal treatment records, her activities of daily living, and her ongoing work  
7 activity.” *Id.*

8       The ALJ’s outright rejection of Dr. Randolph’s 2013 opinions was legally  
9 erroneous. First, the ALJ failed to determine whether Dr. Randolph’s opinions are  
10 entitled to controlling weight. *See* AR 27–28. If his opinions are not entitled to  
11 controlling weight, the ALJ erred by failing to apply the appropriate factors in  
12 determining the extent to which the opinions should be credited. Such factors  
13 include the length of the treatment relationship and the frequency of examination,  
14 the nature and extent of the treatment relationship, supportability, and consistency  
15 with the record. *See* 20 C.F.R. § 416. 927(c)(2)–(6).

16       Second, an ALJ may reject medical opinions that are internally inconsistent.  
17 *See Van Nguyen*, 100 F.3d at 1464. A discrepancy between a provider’s notes and  
18 observations and the provider’s functional assessment is a clear and convincing  
19 reason for not relying on the doctor’s opinion. *Bayliss*, 427 F.3d at 1216. Here, the  
20 ALJ only provides a conclusory statement that Dr. Randolph’s “limitation to  
21 sedentary work is internally inconsistent with his assertion that the claimant had

1 marked limitation in performing any work tasks.” AR 28. The ALJ fails to provide  
2 any analysis as to why a limitation to sedentary work (“Able to lift 10 pounds  
3 maximum and frequently [] lift or carry lightweight articles. Able to walk or stand  
4 only for brief periods.”) is inconsistent with a finding of marked severity (“Very  
5 significant interference with the ability to perform one or more basic work-related  
6 activities.”). AR 554–55. Further, the ALJ does not identify any discrepancy  
7 between Dr. Randolph’s notes and observations and his functional assessments. *See*  
8 AR 27–28. Thus, the ALJ did not sufficiently explain how Dr. Randolph’s March or  
9 September 2013 opinions are internally inconsistent.

10 Finally, the ALJ did not expressly find that Dr. Randolph’s 2013 opinions  
11 were contradicted by any of the other physicians. *See* AR 27–28. Nevertheless, the  
12 ALJ failed to offer clear and convincing or specific and legitimate reasons for  
13 rejecting Dr. Randolph’s opinions. The ALJ’s determination that Dr. Randolph’s  
14 opinions were contradicted by “the objective findings of the in-person examination,  
15 the claimant’s longitudinal treatment records, her activities of daily living, and her  
16 ongoing work activity” are conclusory. AR 27–28. The ALJ’s reasoning is far from  
17 meeting the substantial evidence requirement which can be done by “setting out a  
18 detailed and thorough summary of the facts and conflicting clinical evidence, stating  
19 [her] interpretation thereof, and making findings.” *Garrison*, 759 F.3d at 1012. The  
20 ALJ failed to specifically cite any conflicting clinical evidence or any other place in  
21 the record that contradicted Dr. Randolph’s 2013 opinions.

1 The Court finds that the ALJ improperly afforded Dr. Randolph's 2013  
2 opinions little weight because the finding was based on legal error and not supported  
3 by substantial evidence.

4 **2. Dr. Albert Randolph's 2016 Opinion**

5 Plaintiff argues that the ALJ inappropriately rejected Dr. Randolph's  
6 September 2016 opinion. ECF No. 11 at 12–13. The ALJ afforded Dr. Randolph's  
7 2016 opinion little weight. AR 29.

8 Dr. Randolph examined Plaintiff and completed an Attorney Interrogatory  
9 form in September 2016. AR 835–36, 856–58. Notably, Dr. Randolph diagnosed  
10 Plaintiff with Bertolotti's syndrome, lumbar disc disease, degenerative joint disease,  
11 left leg paresthesia, and left leg arthralgia. *Id.* Dr. Randolph noted that, "[Plaintiff]  
12 tries to work from home with computer but can only work about hour to hour half  
13 [sic] the time and must lay down up to several times a day thinning [sic] of the  
14 situation." AR 859. Dr. Randolph also assessed that Plaintiff would miss on  
15 average four or more days per month due to medical impairments. AR 836.

16 The ALJ gave little weight to Dr. Randolph's 2016 opinion because "it is  
17 inconsistent with the record as a whole, including the objective medical findings, the  
18 claimant's activities of daily living, and her work activity after the alleged onset  
19 date." AR 29. The ALJ noted that Plaintiff testified that she was working during the  
20 2016 hearing. *Id.*

1       The ALJ failed to explain her findings, as required by law, before rejecting the  
2 2016 opinion of Dr. Randolph. As with Dr. Randolph's 2013 opinions, the ALJ  
3 failed to determine whether the 2016 opinion of Dr. Randolph is entitled to  
4 controlling weight. *See* AR 29. If the opinion is not entitled to controlling weight,  
5 the ALJ erred by failing to apply the appropriate factors in determining the extent to  
6 which the 2016 opinion should be credited. *See* 20 C.F.R. § 416. 927(c)(2)–(6).  
7 The ALJ failed to consider factors such as the length of the treatment relationship,  
8 the frequency of examination, the nature and extent of the treatment relationship, the  
9 amount of relevant evidence that supports the opinion, and the quality of the  
10 explanation provided. *See id.*

11       Next, the ALJ erred when she did not explicitly reject Dr. Randolph's 2016  
12 opinion with specific and legitimate reasons or by crediting other providers over Dr.  
13 Randolph. *See* AR 29; *Garrison*, 759 F.3d at 1012. The ALJ's conclusory  
14 determination that Dr. Randolph's opinion was inconsistent with "the record as a  
15 whole, including the objective medical findings, the claimant's activities of daily  
16 living, and her work activity after the alleged onset date" is insufficient. AR 29.  
17 The ALJ fails to explain the decision to afford Dr. Randolph's 2016 opinion little  
18 weight beyond this single sentence. *Id.* The ALJ fails to meet the substantial  
19 evidence requirement because she assigned Dr. Randolph's 2016 opinion little  
20 weight while doing nothing more than "asserting without explanation that another  
21 medical opinion is more persuasive" and "criticiz[ed] it with boilerplate language



1 that fails to offer a substantive basis for [her] conclusion.” *Garrison*, 759 F.3d at  
2 1012.

3 For these reasons, the Court finds that the ALJ improperly afforded Dr.  
4 Randolph’s 2016 opinion little weight because the finding was based on legal error  
5 and not supported by substantial evidence.

6 **3. Dr. Jason Dreyer’s 2016 Opinion**

7 Plaintiff argues that the ALJ inappropriately rejected the 2016 opinion of her  
8 treating physician, Dr. Dreyer. ECF No. 11 at 15. The ALJ afforded Dr. Dreyer’s  
9 opinion some weight because “it is internally inconsistent, and the limitation of  
10 lifting 15 pounds was of limited duration.” AR 28.

11 Dr. Dreyer examined Plaintiff and completed a DSHS Physical Functional  
12 Evaluation form in January 2016. AR 733–35. Dr. Dreyer diagnosed Plaintiff with  
13 neural foraminal stenosis of lumbar spine, spondylosis of lumbar region,  
14 spondylosis, and s/p (“status post”) lumbar spinal fusion. AR 823. Dr. Dreyer  
15 assessed that these diagnoses had a marked limitation on Plaintiff’s ability to sit,  
16 stand, walk, lift, carry, push, pull, reach, stoop, and crouch. *Id.* Dr. Dreyer noted  
17 that Plaintiff could not lift over fifteen pounds and that she could not bend or twist at  
18 the waist. Dr. Dreyer further assessed that Plaintiff would be capable of performing  
19 sedentary work. AR 823–24. Dr. Dreyer was unable to estimate how long the  
20 limitations on Plaintiff’s work activities would persist without further evaluation.  
21 AR 824.

1           An ALJ may reject medical opinions that are internally inconsistent. *See Van*  
2 *Nguyen*, 100 F.3d at 1464. However, the ALJ erred by finding Dr. Dreyer’s opinion  
3 was internally inconsistent. Dr. Dreyer assessed that Plaintiff could never lift over  
4 fifteen pounds. AR 823. Thus, in the check-box portion of the DSHS Functional  
5 Evaluation, Dr. Dreyer assessed Plaintiff would be capable of sedentary work. AR  
6 824. Notably, there is no work level that corresponds exactly with a lifting  
7 limitation of fifteen pounds. *See* AR 824 (sedentary work is defined as “[a]ble to lift  
8 10 pounds maximum and frequently lift or carry lightweight articles” and light work  
9 is defined as “[a]ble to lift 20 pounds maximum and frequently lift or carry up to 10  
10 pounds”). The check-box for sedentary work most closely fits Plaintiff’s lifting and  
11 carrying limitation without exceeding her ability to lift a maximum of fifteen  
12 pounds. In other words, Dr. Dreyer’s assessment of “sedentary work,” with a  
13 limitation of lifting ten pounds, is not internally inconsistent with Dr. Dreyer’s  
14 assessment that Plaintiff could not lift over fifteen pounds.

15           The ALJ summarily states, “the record as a whole supports a finding that the  
16 claimant could lift and carry up to 20 pounds occasionally and 10 pounds frequently  
17 with some additional limitations.” AR 29. However, the ALJ failed to provide  
18 adequate explanations to make this finding despite Dr. Dreyer’s finding that Plaintiff  
19 could not lift more than fifteen pounds, AR 823, and Dr. Randolph’s findings that  
20 Plaintiff could not lift more than ten pounds, AR 355, 555.

1           Additionally, the ALJ incorrectly notes that Dr. Dreyer opined that Plaintiff  
2   “could perform light exertion activity within a year . . . .” AR 28. However, Dr.  
3   Dreyer does not proffer this opinion. This opinion was asserted by a DSHS  
4   Assigned Contractor, Trula Thompson, M.D., who reviewed Dr. Dreyer’s 2016  
5   opinion. AR 837–38. Dr. Dreyer opined the estimated duration that Plaintiff would  
6   be limited to performing sedentary work is “TBD [to be decided] pending next  
7   neurosurgical evaluation.” AR 824. Thus, Dr. Dreyer does not make an opinion  
8   regarding whether the lifting limitation satisfies the twelve-month durational  
9   requirement. 20 C.F.R. § 416.909.

10           The ALJ failed to offer clear and convincing or specific and legitimate reasons  
11   for rejecting Dr. Dreyer’s opinion. The Court finds that the ALJ improperly  
12   afforded Dr. Dreyer’s 2016 opinion some weight as it was not supported by  
13   substantial evidence.

14   **B.     Additional Assignments of Error**

15           Plaintiff additionally argues that the ALJ improperly rejected lay witness  
16   testimony and Plaintiff’s symptom claims and failed to conduct proper assessments  
17   at steps three and five. ECF No. 11 at 8. Because the analysis of these arguments  
18   is dependent on the ALJ’s evaluation of medical evidence, which the ALJ is  
19   instructed to reconsider on remand, the Court declines to address these challenges  
20   here.

21   ///

1 **C. Remedy**

2 The decision whether to remand for further proceedings or reverse and award  
3 benefits is within the discretion of the district court. *McAllister v. Sullivan*, 888 F.2d  
4 599, 603 (9th Cir. 1989). An immediate award of benefits is appropriate where “no  
5 useful purpose would be served by further administrative proceedings, or where the  
6 record has been thoroughly developed,” *Varney v. Sec’y of Health & Human Servs.*,  
7 859 F.2d 1396, 1399 (9th Cir. 1988), or when the delay caused by remand would be  
8 “unduly burdensome.” *Terry v. Sullivan*, 903 F.2d 1273, 1280 (9th Cir. 1990); *see*  
9 *also Garrison*, 759 F.3d at 1021 (noting that a district court may abuse its discretion  
10 not to remand for benefits when all of these conditions are met). This policy is  
11 based on the “need to expedite disability claims.” *Varney*, 859 F.2d at 1401. But  
12 where there are outstanding issues that must be resolved before a determination can  
13 be made, and it is not clear from the record that the ALJ would be required to find a  
14 claimant disabled if all the evidence were properly evaluated, remand is appropriate.  
15 *See Benecke v. Barnhart*, 379 F.3d 587, 595–96 (9th Cir. 2004); *Harman v. Apfel*,  
16 211 F.3d 1172, 1179–80 (9th Cir. 2000).

17 Although Plaintiff requests a remand with a direction to award benefits, ECF  
18 No. 11 at 15, 16, 20, Plaintiff also requests a remand for further administrative  
19 proceedings, ECF No. 11 at 21, which the Court finds appropriate. *See Treichler v.*  
20 *Comm’r of Soc. Sec. Admin.*, 775 F.3d 1090, 1103–04 (9th Cir. 2014) (holding that  
21 remand for benefits is not appropriate when further administrative proceedings

1 would serve a useful purpose). Here, the ALJ improperly considered medical  
2 opinion evidence, which calls into question whether the assessed RFC and resulting  
3 hypothetical propounded to the vocational expert are supported by substantial  
4 evidence. “Where,” as here, “there is conflicting evidence, and not all essential  
5 factual issues have been resolved, a remand for an award of benefits is  
6 inappropriate.” *Id.* at 1101. Thus, the Court remands this case for further  
7 proceedings.

8 On remand, the ALJ must reconsider the medical opinion evidence, and  
9 provide legally sufficient reasons for evaluating all of the relevant limitations  
10 assessed in these opinions, including precise citation to substantial evidence in the  
11 record to support those reasons. If necessary, the ALJ should order additional  
12 consultative examinations and, if appropriate, take additional testimony from  
13 medical experts. The ALJ should also reconsider the credibility analysis and lay  
14 witness testimony. Finally, the ALJ should reassess Plaintiff’s RFC and, if  
15 necessary, take additional testimony from a vocational expert which includes all of  
16 the limitations credited by the ALJ.

17 Accordingly, **IT IS SO ORDERED:**

18 1. Plaintiff’s Motion for Summary Judgment, **ECF No. 11**, is **GRANTED**,  
19 and the matter is **REMANDED** to the Commissioner for additional  
20 proceedings consistent with this Order.

21 2. Defendant’s Motion for Summary Judgement, **ECF No. 12**, is **DENIED**.

3. Judgment shall be entered in favor of Plaintiff.

**IT IS SO ORDERED.** The District Court Clerk is directed to enter this Order, provide copies to counsel, enter judgment as directed, and **CLOSE** this case.

**DATED** April 26, 2019.

*s/ Rosanna Malouf Peterson*  
 ROSANNA MALOUF PETERSON  
 United States District Judge